

Introduced by Senators DeSaulnier and Hancock

February 21, 2014

An act to amend Section 17151 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1372, as introduced, DeSaulnier. Personal income tax: educational assistance credit.

The Personal Income Tax Law provides for an exclusion from the gross income of an employee for amounts paid or incurred by an employer for educational assistance to the employee, as specified, up to \$5,250 during a calendar year.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17151 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 17151. (a) Gross income of an employee does not include any
- 4 amounts, not exceeding an aggregate amount of five thousand two
- 5 hundred fifty dollars (\$5,250) per calendar year, that is paid or
- 6 incurred by the employer for educational assistance to the employee
- 7 pursuant to an educational assistance program.
- 8 (b) For purposes of this section, the following definitions shall
- 9 apply:

(1) “Educational assistance” means the payment by an employer of expenses incurred ~~by or on behalf of~~ *by, or on behalf of*, an employee for the employee’s education, and includes, but is not limited to, payments for books, supplies, equipment, tuition, and fees, and similar payments. “Educational assistance” includes the provision by an employer of courses of instruction for an employee, including the provision of books, supplies, and equipment. “Educational assistance” does not include any payment for, or the provision of, any of the following:

(A) Any tools or supplies that may be retained by the employee after completion of a course of instruction.

(B) Any meals, lodging, or transportation.

(C) Any course or education involving sports, games, or hobbies.

(D) Any course or education taken at the graduate level of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree. This subparagraph applies only to any course or education taken at the graduate level beginning after June 30, 1996, and before January 1, 2000.

(2) “Educational assistance program” means a separate written plan of an employer for the exclusive benefit of his or her employees to provide those employees with educational assistance. The program shall meet the following requirements:

(A) The program benefits employees who qualify under a classification established by the employer and found by the Franchise Tax Board not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of Section 414(q) of the Internal Revenue Code) or their dependents. For purposes of this subparagraph, there shall be excluded from consideration employees who are not included in the program and who are included in a unit of employees covered by an agreement that the Franchise Tax Board finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between the employee representatives and the employer or employers.

(B) Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are owners (or their spouses or dependents), each of whom, on any day of the year,

owns more than 5 percent of the capital or profits interest in the employer.

(C) The program does not provide eligible employees with a choice between educational assistance and other remuneration includable in gross income. For purposes of this section, the business practices of the employer, as well as the written program, shall be taken into account.

(D) The program need not be funded.

(E) Reasonable notification of the availability and terms of the program is provided to eligible employees.

(3) "Employee" includes self-employed individuals within the meaning of Section 401(c)(1) of the Internal Revenue Code.

(c) For purposes of this section:

(1) Any individual who owns the entire interest in an unincorporated trade or business shall be treated as his or her own employee.

(2) A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3) of subdivision (b).

(3) (A) An educational assistance program shall not be considered to fail to meet any of the requirements of paragraph (2) of subdivision (b) on the sole basis of either of the following:

(i) Different utilization rates for the different types of educational assistance made available under the program.

(ii) Successful completion or attainment of a particular course grade is required for or considered in determining reimbursement under the program.

(B) This section shall not be construed to affect the deduction or inclusion in income of amounts that are paid or incurred or received as reimbursement for educational expenses under Section 117, 162, or 212 of the Internal Revenue Code.

(d) ~~No~~A deduction or credit shall *not* be allowed to the employee with respect to any amount that the employee excludes from income pursuant to this section.

(e) Section 127 of the Internal Revenue Code shall not apply.

(f) This section shall apply with respect to expenses relating to courses beginning after June 30, 1996.